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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Gene Edward Scott, II,

10 Plaintiff,

11 v.

12 Phoenix Municipal Court, et al.,

13 Defendants.
14

No. CV-22-00597-PHX-DWL

ORDER

15 On April 11, 2022, Gene Edward Scott, II (“Plaintiff”), who has filed at least 25
16 unsuccessful lawsuits in this Court over the last two decades, filed a *pro se* complaint
17 (Doc. 1) and an application to proceed in forma pauperis (Doc. 2). For the following
18 reasons, the application is granted and the complaint is dismissed with leave to amend.

19 **I. IFP Application**

20 Plaintiff’s application indicates that Plaintiff has insufficient funds to prepay the
21 filing fee for this action. Accordingly, Plaintiff’s application is granted.

22 **II. Statutory Screening Of IFP Complaints**

23 The Court is required to screen complaints brought in forma pauperis.¹ 28 U.S.C.
24 § 1915(e)(2). The Court must dismiss a complaint or portion thereof if a plaintiff has
25 raised claims that are legally frivolous or malicious, that fail to state a claim upon which
26 relief may be granted, or that seek monetary relief from a defendant who is immune from
27 such relief. 28 U.S.C. § 1915(e)(2).

28 ¹ Although § 1915 largely concerns prisoner litigation, § 1915(e) applies to all in
forma pauperis proceedings. *Calhoun v. Stahl*, 254 F.3d 845 (9th Cir. 2001).

1 A pleading must contain a “short and plain statement of the claim showing that the
2 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). While Rule 8 does not demand
3 detailed factual allegations, “it demands more than an unadorned, the-defendant-
4 unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).
5 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory
6 statements, do not suffice.” *Id.*

7 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
8 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
9 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual
10 content that allows the court to draw the reasonable inference that the defendant is liable
11 for the misconduct alleged.” *Id.* “Determining whether a complaint states a plausible
12 claim for relief [is]. . . a context-specific task that requires the reviewing court to draw on
13 its judicial experience and common sense.” *Id.* at 679.

14 The Ninth Circuit has instructed that courts must “continue to construe pro se
15 filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). A “complaint
16 [filed by a pro se individual] ‘must be held to less stringent standards than formal
17 pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)
18 (per curiam)). Conclusory and vague allegations, however, will not support a cause of
19 action. *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).
20 A liberal interpretation may not supply essential elements of the claim that were not
21 initially pled. *Id.*

22 III. The Complaint

23 Plaintiff names Maricopa County, City of Phoenix, State of Arizona, and the
24 United States Army as defendants. (Doc. 1 at 2.) The complaint alleges that “The
25 Defendants falsely accused Alcohol DUIs to Plaintiff who never consumed alcohol
26 (Alcohol nor Narcotic) nor used a weapon no broken law ever, but humbly request[s]
27 diplomatic immunity and a legal passport.” (*Id.* at 4.) The complaint further alleges that
28 “Plaintiff ‘submissively’ suffers defamation of character” and requests “elimination” of

1 Plaintiff's "criminal records." (*Id.*)

2 **A. Jurisdiction**

3 The Court must determine *sua sponte* whether it has subject-matter jurisdiction.
 4 *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1116 (9th Cir. 2004). *See also* Fed. R. Civ. P.
 5 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the
 6 court must dismiss the action."). The party asserting jurisdiction bears the burden of
 7 proving its existence. *Cook v. AVI Casino Enters., Inc.*, 548 F.3d 718, 722 (9th Cir.
 8 2008). Here, the Court lacks subject-matter jurisdiction because the complaint fails to
 9 allege either diversity jurisdiction or federal question jurisdiction.

10 Plaintiff checked the "federal question" box as the basis for federal court
 11 jurisdiction and lists the basis as "'VIII Amendment of the United States Constitution' to
 12 'Civil Rights Act of 1964 As Amended.'" (Doc. 1 at 3.) However, nowhere else in the
 13 complaint does Plaintiff allege how his Eighth Amendment rights or civil rights were
 14 violated, who violated them, or whether he is asserting a claim under 42 U.S.C. § 1983.
 15 *Woods v. City of Scottsdale*, 2013 WL 614421, *4 (D. Ariz. 2013) ("While the United
 16 States Supreme Court has instructed federal courts to liberally construe the 'inartful
 17 pleading' of pro se litigants, it is not enough to simply mention a clause in the
 18 Constitution.") (citation omitted).

19 Although Plaintiff marked the "federal question" box in the complaint, what
 20 appears to be his underlying cause of action—defamation—is a state law claim. (Doc. 1
 21 at 4.) Thus, Plaintiff must demonstrate, by a preponderance of the evidence, that
 22 diversity jurisdiction exists. *Lew v. Moss*, 797 F.2d 747, 749-50 (9th Cir. 1986); *see also*
 23 *McNatt v. Allied-Signal, Inc.*, 972 F.2d 1340 (9th Cir. 1992). Diversity jurisdiction exists
 24 when there is complete diversity of citizenship between the plaintiffs and the defendants
 25 and the amount in controversy exceeds \$75,000, exclusive of interests and costs. 28
 26 U.S.C. § 1332. A controversy meets this requirement when "all the persons on one side
 27 of it are citizens of different states from all the persons on the other side." *Strawbridge v.*
 28 *Curtiss*, 7 U.S. 267 (1806).

1 Here, the complaint fails to affirmatively set forth the facts necessary to determine
 2 the parties' citizenship, complete diversity, or that the controversy exceeds \$75,000,
 3 exclusive of interests and costs. Plaintiff does not allege his citizenship, the Defendants'
 4 citizenship, or that the controversy exceeds the statutory amount. (*Id.* at 4-5.) To the
 5 extent Plaintiff was intending to allege that both he and at least one of the defendants are
 6 citizens of Arizona, there would not be complete diversity. "Absent unusual
 7 circumstances, a party seeking to invoke diversity jurisdiction should be able to allege
 8 affirmatively the actual citizenship of the relevant parties." *Kanter v. Warner-Lambert*
 9 *Co.*, 265 F.3d 853, 857 (9th Cir. 2001).

10 Moreover, some of the named defendants possess immunity from suit. The State
 11 of Arizona is "protected by the Eleventh Amendment from suits brought by citizens in
 12 federal court," *Douglas v. California Dep't of Youth Auth.*, 271 F.3d 812, 817 (9th Cir.
 13 2001), and federal courts lack subject-matter jurisdiction over suits brought against the
 14 federal government or its entities unless there exists a specific, express waiver of
 15 sovereign immunity. *Lehman v. Nakshian*, 453 U.S. 156, 160 (1981) (the United States is
 16 immune from suit except as it consents to be sued); *FDIC v. Meyer*, 510 U.S. 471, 475
 17 (1994) ("Absent a waiver, sovereign immunity shields the Federal Government and its
 18 agencies from suit.").

19 **B. Rule 8**

20 As explained above, a claim must be stated clearly enough to enable a defendant
 21 to frame a responsive pleading. A complaint must contain "a short and plain statement of
 22 the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). "Each
 23 averment of a pleading shall be simple, concise, and direct." Fed. R. Civ. P. 8(e)(1).

24 Here, the complaint falls far short of satisfying the requirements of Rule 8.
 25 Plaintiff does not provide a "short and plain statement" for any claim. Although Plaintiff
 26 lists the Eighth Amendment, Civil Rights Act, and appears to allege a defamation claim,
 27 he fails to allege facts that would support any such claim. *Myers-Armstrong v. Actavis*
 28 *Totowa, LLC*, 382 F. App'x 545, 547 (9th Cir. 2010) (affirming dismissal for failure to

1 state a claim in part because the complaint gave “no notice of the alleged illegal act and,
2 therefore, fail[ed] to satisfy Federal Rule of Civil Procedure 8(a), because it [did] not set
3 forth ‘a short plain statement of the claim showing that the pleader is entitled to relief.’”))

4 **IV. Leave To Amend**

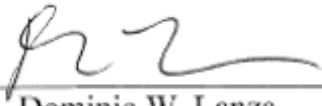
5 Plaintiff will be given an opportunity, if he so chooses, to amend his complaint to
6 make clear his allegations in short, plain statements with each claim for relief identified
7 in separate sections. In the amended complaint, Plaintiff must write out the rights he
8 believes were violated, the name of the person and/or entity who violated the right,
9 exactly what that individual or entity did or failed to do, how the action or inaction of that
10 person is connected to the violation of Plaintiff’s right, and what specific injury Plaintiff
11 suffered because of the other entity’s conduct. *Rizzo v. Goode*, 423 U.S. 362, 371–72,
12 377 (1976). Each claim of an alleged violation must be set forth in a separate count. Any
13 amended complaint filed by Plaintiff must conform to the requirements of Rule 8 of the
14 Federal Rules of Civil Procedure, which includes “a short and plain statement of the
15 grounds for the court’s jurisdiction.” Fed. R. Civ. P. 8(a)(1).

16 Accordingly,

17 **IT IS ORDERED** that:

- 18 1. Plaintiff’s Application To Proceed In forma Pauperis (Doc. 2) is **granted**.
- 19 2. Plaintiff’s complaint (Doc. 1) is **dismissed**, with leave to file an amended
20 complaint by **May 27, 2022**.
- 21 3. If Plaintiff elects not to file an amended complaint by **May 27, 2022**, the
22 Clerk is directed to **dismiss** this action without further order of the court.

23 Dated this 6th day of May, 2022.

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26 
27 **Dominic W. Lanza**
28 **United States District Judge**